

In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.4849 of 2006.

Date of decision:4.5.2007.

The State of Punjab and others.

...Petitioners.

Versus

Daljit Singh.

...Respondent.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Suvir Sehgal, Additional Advocate General, Punjab.

Mr.P.C.Chaudhary Advocate for the respondent.

...

Judgment.

S. N. Aggarwal, J.

Daljit Singh, respondent had filed a suit for a declaration. It was decreed by the learned trial Court vide judgment and decree dated 6.4.2005.

The petitioners filed an appeal against the said judgment.

During the pendency of the appeal, the judgment of the learned trial Court was complied with either wholly or partly vide order dated 16.1.2006 but the said order was made subject to the final decision of the appeal.

The appeal was taken by the learned Appellate Court on 28.4.2006. The said appeal was dismissed by the learned Lower Appellate Court as infructuous as the judgment of the trial Court was complied with.

Hence, the present petition.

The submission of learned State counsel was that the promotion of the respondent was made subject to the decision of the appeal. Similarly, the pay scales or arrears thereof were paid in compliance with the judgment of the learned trial Court but this order was subject to the decision in the appeal. Therefore, compliance with the trial Court order was made which was subject to the decision in the appeal and the judgment of the trial Court was not accepted as final. Hence, the learned Lower Appellate Court was not justified in dismissing the appeal as infructuous.

On the other hand, the submission of learned counsel for the respondent was that the learned Appellate Court had granted the stay order against the judgment and decree dated 6.4.2005 passed by the learned trial Court. In spite of the stay order against the judgment dated 6.4.2005, the petitioners complied with the direction in the judgment and decree dated 6.4.2005. The only conclusion that could be drawn from this conduct of the petitioners was that they had taken the judgment of the learned trial Court dated 6.4.2005 as full and final and had complied with the said judgment. Therefore, the learned Lower Appellate Court was justified in dismissing the appeal as infructuous.

Considered.

The learned State counsel has submitted that there was no stay order for which the petitioners had to comply with the trial Court judgment but the learned counsel for the respondent submits that the stay order was granted by the learned Appellate Court on 16.5.2005 itself and, therefore, there was no necessity for the petitioners to comply with the judgment of the learned trial Court.

Whatever may be, the contents and conditions of the order dated 16.1.2006 by which the judgment of the trial Court dated 6.4.2005 was complied with, are very material. The perusal of the order dated 16.1.2006 reveals that whatever benefits were given to the respondent in terms of the judgment of the learned trial Court dated 6.4.2005 were subject to the final decision in the appeal. Therefore, compliance of the judgment of learned trial Court dated 6.4.2005 was only conditional and not final or conclusive. In these circumstances, the learned Lower Appellate Court was not justified in disposing of the appeal vide impugned order dated 28.4.2006 as infructuous.

Accordingly, the impugned order dated 28.4.2006 is set aside and the learned Lower Appellate Court is directed to decide the appeal on merits. The parties may appear before the learned Lower Appellate Court on 29.5.2007.

The learned State counsel submits that stay order should be granted as the execution proceedings instituted by the respondent in the judgment dated 6.4.2006 are pending against the petitioners.

Considered.

It was submitted by the learned counsel for the respondent that the learned Lower Appellate Court has granted the stay order against the judgment of the learned trial Court dated 6.4.2005. If it is so, it will come into force after the final order of the Lower Appellate Court in the appeal has been set aside. If there is no stay order as aforesaid, it would be for the petitioners to apply for stay in the learned Lower Appellate Court.

This petition is disposed of in the above terms.

The learned Lower Appellate Court shall dispose of the appeal expeditiously.

Dasti copies of this order be given to the counsel for the parties on payment of usual charges.

May 4, 2007.
Jaggi

(S. N. Aggarwal)
Judge